

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Mitchell Keith Goodrum,

Plaintiff,

KENNETH PEELE
INVESTIGATIONS, et al.,

Defendants.

3:20-cv-00572-MMD-CLB

**REPORT AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE¹**

Before the court is Plaintiff Mitchell Goodrum's ("Goodrum"), application to proceed *in forma pauperis* (ECF No. 1), and his *pro se* civil rights complaint (ECF No. 1-1). For the reasons stated below, the court recommends that Goodrum's *in forma pauperis* application (ECF No. 1) be granted and his complaint (ECF No. 1-1) be dismissed without prejudice and without leave to amend.

I. *IN FORMA PAUPERIS* APPLICATION

A person may be granted permission to proceed *in forma pauperis* ("IFP") if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable pay such fees or give security therefore. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

The Local Rules of Practice for the District of Nevada provide: "Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include a financial affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

¹ This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 “[T]he supporting affidavit [must] state the facts as to [the] affiant’s poverty with some
 2 particularity, definiteness and certainty.” *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir.
 3 1981) (quotation marks and citation omitted). A litigant need not “be absolutely destitute to
 4 enjoy the benefits of the statute.” *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331,
 5 339 (1948).

6 A review of the application to proceed IFP reveals Goodrum cannot pay the filing fee;
 7 therefore, the court recommends that the application (ECF No. 1) be granted.

8 **II. SCREENING STANDARD**

9 Inmate civil rights complaints are governed by 28 U.S.C. § 1915A. Section 1915A
 10 provides, in relevant part, that “the court shall dismiss the case at any time if the court
 11 determines that . . . the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim
 12 upon which relief may be granted; or (iii) seeks monetary relief against a defendant who is
 13 immune from such relief.” 28 U.S.C. § 1915A(b). A complaint is frivolous when “it lacks an
 14 arguable basis in either law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). This
 15 includes claims based on legal conclusions that are untenable (e.g., claims against
 16 defendants who are immune from suit or claims of infringement of a legal interest which
 17 clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,
 18 delusional scenarios). *Id.* at 327–28; see also *McKeever v. Block*, 932 F.2d 795, 798 (9th
 19 Cir. 1991). Dismissal for failure to state a claim under § 1915A incorporates the same
 20 standard applied in the context of a motion to dismiss under Federal Rule of Civil Procedure
 21 12(b)(6), *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012), which requires dismissal
 22 where the complaint fails to “state a claim for relief that is plausible on its face,” *Bell Atl.*
 23 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

24 The complaint is construed in a light most favorable to the plaintiff. *Chubb Custom*
 25 *Ins. Co. v. Space Systems/Loral Inc.*, 710 F.3d 946, 956 (9th Cir. 2013). The court must
 26 accept as true all well-pled factual allegations, set aside legal conclusions, and verify that
 27 the factual allegations state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 679

1 (2009). The complaint need not contain detailed factual allegations, but must offer more
2 than “a formulaic recitation of the elements of a cause of action” and “raise a right to relief
3 above a speculative level.” *Twombly*, 550 U.S. at 555. Particular care is taken in reviewing
4 the pleadings of a *pro se* party, for a more forgiving standard applies to litigants not
5 represented by counsel. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). Still, a liberal
6 construction may not be used to supply an essential element of the claim not initially pled.
7 *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992). If dismissal is appropriate, a *pro se*
8 plaintiff should be given leave to amend the complaint and notice of its deficiencies, unless
9 it is clear that those deficiencies cannot be cured. *Cato v. United States*, 70 F.3d 1103,
10 1107 (9th Cir. 1995).

11 **III. SCREENING OF COMPLAINT**

12 In his complaint, Goodrum sues Defendants Kenneth Peele Investigations and
13 Kenneth Peele under 42 U.S.C. § 1983. (See ECF No. 1-1.) The complaint relates to
14 Goodrum’s underlying state criminal case. (*Id.*) Goodrum alleges that the Defendants, who
15 were hired on behalf of Goodrum’s defense to investigate the incidents surrounding his
16 criminal charges, made a number of errors in his criminal case. (*Id.*) Goodrum asserts that
17 Peele should have investigated, or did investigate but suppressed findings related to
18 Goodrum’s criminal case, which ultimately resulted in Goodrum’s criminal conviction. (*Id.* at
19 6.) Goodrum seeks Peele’s findings and reports related to the criminal case, as well as
20 monetary damages. (*Id.* at 7.)

21 42 U.S.C. § 1983 aims “to deter state actors from using the badge of their authority
22 to deprive individuals of their federally guaranteed rights.” *Anderson v. Warner*, 451 F.3d
23 1063, 1067 (9th Cir. 2006) (quoting *McDade v. West*, 223 F.3d 1135, 1139 (9th Cir. 2000)).
24 The statute “provides a federal cause of action against any person who, acting under color
25 of state law, deprives another of his federal rights[,]” *Conn v. Gabbert*, 526 U.S. 286, 290
26 (1999), and is “merely . . . the procedural device for enforcing substantive provisions of the
27 Constitution and federal statutes.” *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991).

1 Claims under § 1983 require the plaintiff to allege (1) the violation of a federally-protected
 2 right by (2) a person or official who acts under the color of state law. *Anderson*, 451 F.3d at
 3 1067.

4 However, § 1983 is not a backdoor through which a federal court may overturn a
 5 state court conviction or award relief related to the fact or duration of a sentence. Section
 6 1983 and “the federal habeas corpus statute . . . both provide access to the federal courts
 7 ‘for claims of unconstitutional treatment at the hands of state officials, . . . [but] they differ in
 8 their scope and operation.’” *Ramirez v. Galaza*, 334 F.3d 850, 854 (9th Cir. 2003) (quoting
 9 *Heck v. Humphrey*, 512 U.S. 477, 48 (1994)). Federal courts must take care to prevent
 10 prisoners from relying on § 1983 to subvert the differing procedural requirements of *habeas*
 11 *corpus* proceedings under 28 U.S.C. § 2254. *Heck*, 512 U.S. at 486-87; *Simpson v.*
 12 *Thomas*, 528 F.3d 685, 695 (9th Cir. 2008). When a prisoner challenges the legality or
 13 duration of his custody, raises a constitutional challenge which could entitle him to an earlier
 14 release, or seeks damages for purported deficiencies in his state court criminal case, which
 15 effected a conviction or lengthier sentence, his sole federal remedy is a writ of *habeas*
 16 *corpus*. *Edwards v. Balisok*, 520 U.S. 641, 648 (1997); *Heck*, 512 U.S. at 481; *Wolf v.*
 17 *McDonnell*, 418 U.S. 539, 554 (1974); *Preiser v. Rodriguez*, 411 U.S. 475 (1973); *Simpson*,
 18 528 F.3d at 692-93. Stated differently, where “a judgment in favor of the plaintiff would
 19 necessarily imply the invalidity of his conviction or sentence,” then “the complaint must be
 20 dismissed unless the plaintiff can demonstrate that the conviction or sentence has already
 21 been invalidated.” *Heck*, 512 U.S. at 487.

22 It appears that Goodrum is challenging the constitutionality of his state court criminal
 23 conviction. Consequently, he must demonstrate that his conviction has been overturned to
 24 proceed in an action under § 1983. As he has not done so, his sole relief is a *habeas corpus*
 25 action. The court, therefore, recommends that the complaint be dismissed without prejudice
 26 and without leave to amend.

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1 **IV. CONCLUSION**

2 For the reasons articulated above, the court recommends that Goodrum's application
3 to proceed *in forma pauperis* (ECF No. 1) be granted and his complaint (ECF No. 1-1) be
4 dismissed without prejudice and without leave to amend.

5 The parties are advised:

6 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
7 Practice, the parties may file specific written objections to this Report and Recommendation
8 within fourteen days of receipt. These objections should be entitled "Objections to
9 Magistrate Judge's Report and Recommendation" and should be accompanied by points
10 and authorities for consideration by the District Court.

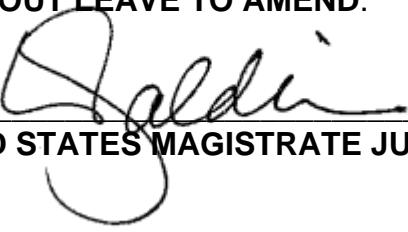
11 2. This Report and Recommendation is not an appealable order and any notice
12 of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District
13 Court's judgment.

14 **V. RECOMMENDATION**

15 **IT IS THEREFORE RECOMMENDED** that Goodrum's application to proceed *in*
16 *forma pauperis* (ECF No. 1) be **GRANTED**; and,

17 **IT IS FURTHER RECOMMENDED** that Goodrum's complaint (ECF No. 1-1) be
18 **DISMISSED WITHOUT PREJUDICE AND WITHOUT LEAVE TO AMEND.**

19 **DATED:** October 19, 2020.

20 
UNITED STATES MAGISTRATE JUDGE